

## **LICENSING BOARD OF TASMANIA**

**IN THE MATTER of an Application by Kane Aaron Symons for a General Licence**

**IN THE MATTER of premises known as the Legana Tavern, 2-12 Freshwater Point Road Legana**

### **DECISION**

This matter was heard on the 16<sup>th</sup> February 2000 at Launceston.

Present were Andrew Mead and Denita Harris from the Australian Hotels Association, Michael Steele on behalf of the applicant to provide market research evidence, Murray Symons, Chairman of "Symons Group" in support of the application, Jenny McCarthy from the Licensing Commission (Observer) Kane Symons, Applicant, Peter Geary Licensee and employed manager of the Riverside Hotel/Motel, and Ian Plowman freehold owner and businessman owner of the Riverside Hotel/Motel.

The Applicant Mr Symons referred to the papers filed in this matter including specifically the submission for the granting of a general liquor licence dated 15<sup>th</sup> December: which canvassed such issues as the applicant's background, facilities intended to be provided, community support, assertions as to the benefits to the community of the intended licensed premises, submissions with regard to orderly development of the hospitality industry, a feasibility study, and "additional factors" including cost of construction, construction details, parking, noise, traffic and assertions with regard to crime.

Appended to the application was a marketing survey, feasibility report, town planning report, parking reports and location maps. This application falls for consideration under the guidelines.

The applicant intends to construct premises which will include a public bar, drive through bottle shop, restaurant and bar with dance floor and provision for gaming facilities at a later date. The applicant asserted that the only people that truly have a legitimate interest in the granting of the liquor licence are the local residents and not those people representing existing establishments specifically from outside the community. He asserted that he had significant community support and accepted that the Board cannot accept that assertion at face value. We think by this it was meant that evidence would be required, and the applicant put forward evidence from Mr Steele of Tilbury Steele & Farley as to a market survey which had the objective of assessing the level of community support for the project.

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That report and Mr Steele's evidence did support a proposition that those members of the local community surveyed, as a representative sample, "supported" the establishment of the licensed premises.

S. 216 of the Liquor & Accommodation Act 1990 does not entitle or require the Board to take account only of the views of a section of the community in the immediate locale. The Board is obliged to have regard to legitimate interests and concerns of any section of the community but is also required to have greater regard for the legitimate interests and concerns of the community as a whole.

The benefits asserted by the applicant were that there would be less travelling for locals for liquor and food services, there would be availability of meals and that meals would be provided as an adjunct to the service of liquor, there would be a meeting and function venue, an entertainment venue, employment in staffing and contract services and casual positions (on establishment and during construction), that the property would be a catalyst for further commercial development in the zone and that there would be development of local industry.

It appears from the evidence that the closest other hotel in the area is approximately 7 kilometres away at Rosevears and the next one from there is the Riverside Hotel 9 kilometres away with further premises at Exeter 12 kilometres away.

The Board is obliged to make a decision which will, in the Board's opinion, best aid and promote the economic and social growth of Tasmania by encouraging and facilitating the orderly development of the hospitality industry in Tasmania.

Under the guidelines we are also obliged to take account of a degree to which existing premises in the locality are satisfying the need intended to be satisfied by the new licence.

The particular premises seem to have been dogged by the need for recurrent or repetitive applications to the Local Council for zoning and development approval, over many years. It is sufficient to say here that planning considerations have been well dealt with and the intended premises meet the legal requirements under relevant planning laws. No issue arises on the evidence with regard to traffic, pedestrians, access and car park layout and other essentially planning issues. That is not to say that planning issues cannot, on occasion, still be relevant considerations in the liquor licensing context whether or not dealt with under planning laws.

The premises would be a quite "substantial" hotel with surrounding landscaped and parking areas on Freshwater Point Road. An estimated costing of \$320,000.00 was provided.

The Australian Hotel Association stated that premises in the vicinity satisfy the need intended to be satisfied by the Applicant, and that there was not sufficient evidence for the Board to be satisfied that the criteria in S. 216 of the Act had been met. These propositions were supported by the representatives with affiliations to the Riverside Hotel/Motel and the Exeter Hotel.

At the hearing a number of documents were tendered by the applicant which had varying degrees of information and relevance. A statement of support for the establishment of a licensed tavern in the form of a survey or petition simply signed by a number of people (appearing to be approximately 100 different people) was tendered. There has been much said in previous decisions of this Board with regard to such informal petitions or statements and there is little weight the Board can put on that document given that none of the people were present and the process by which the document came to be signed was not satisfactorily explained.

The premises were the subject of an application by Philip Griggs for a general licence which was refused on the 21<sup>st</sup> December 1998 (see Decision of the Board of that date). In that application the Board determined that s.25A of the Act would be breached if the Board did direct the grant of the licence in the context of the evidence as there presented (connection with the supermarket).

In view of the futility of proceeding given that S. 25A would be breached, the Board determined not to take further evidence with regard to the property, in that matter. The basis of that decision is therefore not relevant to the present application.

We asked the applicant questions with regard to any prospect of or intention to on-sell the premises to any-one associated with supermarket premises; the applicant asserted firmly that there was no such intention or likelihood. The application proceeded on the basis of that representation.

In cross-examination, by Ms Harris, Mr Steele responded to questions with regard to the processes by which his formal survey arose. This highlighted that some of the questions may be considered to have positively reinforced the plans by suggesting a positive answer and that, in any event, one third of respondents stated they did not wish to have the premises developed as planned. On the other hand, clearly two-thirds of respondents were in favour and the level of positive suggestion in the questions did not appear to the Board to be such as to remove usefulness from the data collected.

The AHA objected on the basis that “needs” were already satisfied by existing licences and referred to and provided the Board with copies of previous decisions where this criterion had been considered (in particular, general licence application by Michael Kent on behalf of Woolworths (Victoria) Pty. Ltd. for off licensed premises at Claremont,

Rosny and Campbell Street, 22<sup>nd</sup> December 1999, Spreyton Park Convention Centre/Tavern application by Ricky Sutton 24<sup>th</sup> December 1998, Point Arthur Tavern, James R. Lamb, 6<sup>th</sup> November 1998, and the abovementioned application of Phillip Griggs of 21<sup>st</sup> December 1998 for the same site).

The Board has considered those prior decisions. Some determinations in those matters prove useful when reviewing the present application.

In the Cheaper Liquor Company matter, at page 5, we said:

*“The AHA particularly made note of the numerous premises in the vicinity of each of the premises the subject of the applications, which provide liquor for consumption on the premises. We conclude that in each instance there is a ready supply of other licensed premises in the locality of each of the subject premises, such that there is (from the public’s perspective) no need for further premises providing liquor for consumption on premises. This is not an absolute determination; it is relative to the nature and quality of the intended premises and the overall nature and level of service intended to be provided therefrom. In context then the question of need for such premises is considered by the Board to militate against the grant of these applications”.*

In the present case however, the nature and quality of the intended premises is significantly better than that proposed in the Cheaper Liquor Company matter.

The AHA rightly pointed out that there were no witnesses provided by the Applicant to indicate the community giving support. No one from the local community attended to give evidence and to submit to cross examination or questioning.

The AHA also pointed out that like the Club Seven application, there was an element of this application which indicated that this would be just “bar open” and that there was little definition to all of the other services intended to be provided. The Board concludes that in fact there is greater definition of intention in the applicant’s papers and should the licence be granted it will be granted on the basis of the representations contained in the Application as to provision of entertainment and food.

The owners or operators of a nearby retirement village (across the road from the subject premises), the Maranatha Retirement Homes, conducted by the Seventh Day Adventist Church, objected in writing (letter 21<sup>st</sup> January 2000) but no one was present to support that objection from the Church and hence the opportunity to question the evidence or cross examine the objector was not available.

The objection in that instance was general, asserting harmful effects of legal drugs like alcohol, avoidable costs associated with alcohol consumption, violence, property loss or

damage and lost productivity due to alcohol related incidents, and community concern regarding excessive alcohol drinking. The letter of objection also and additionally supported propositions outlined in the AHA submissions (principally regarding “need”).

The structure of the Liquor & Accommodation Act recognises something which is well accepted by the majority in our society, that the provision of liquor in conjunction with the hospitality industry is reasonably to be expected and encouraged where it is likely to promote social and economic benefits. Provision of liquor per se is obviously not considered by the policymakers, the Parliament, to be so detrimental that there should be a prohibition or moratorium on the grant of new licences.

On balance, the intentions, to provide substantial food catering services, the intended employment which will arise, the beneficial economic effect of the construction and continuing use of the premises, the meeting facilities and the general hospitality services intended to be provided, including the sale of liquor for consumption on and off premises, is accepted in this instance as being beneficial in the context of S. 216 of the Act.

The Board does not consider that the granting of a licence would be contrary to the interests and concerns of the community generally nor in the locality.

In its discretion, the Board considers that the level to which existing premises in the locality meet the need intended to be satisfied by the Applicant with these premises is not such as to dictate that the licence should not be granted.

On balance it is not apparent that there will be net adverse effects on the community as a whole nor on the interests of the community in that area by the provision of the services intended to be provided and hence from the granting of the licence. There is a reasonable expectation that the interests and concerns of the community would be positively contributed to by the licensed premises in that they will offer a greater range of facilities than is currently available. This has benefits directly by the provision of those services and indirectly by the catalyst of enhancing competition, encouraging diversity and quality of service.

The Board directs the Commissioner to grant this Application for a general licence.

Dated:

P A Kimber  
Presiding Member

W Morris  
Member

L Finney  
Member

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